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OFFICE OF PETITIONS

In re Application of :
Chris Quinlan :
Application No. 10/661,886 : DECISION ON PETITION
Filed: September 15, 2002 : UNDER 37 CFR 1.53(e)
Attorney Docket No. PNM01 010 CONT :
:

This is a decision on the petition under 37 CFR 1.53(e), filed January 28, 2004, requesting that this application be accorded a filing date of September 15, 2003.

The petition under 37 CFR 1.53(e) is granted.

The application was deposited on September 15, 2003. However, on December 15, 2003, the Office of Initial Patent Examination Division mailed a "Notice of Incomplete Nonprovisional Application," stating that the application was deposited without drawings and that the filing date of the application will be the date of receipt of the drawings. The Notice also required the submission of an executed oath or declaration covering the items stated to be missing.

In response, the present petition was filed. The petition argues that the drawings stated to have been missing by the Notice of December 15, 2003, were in fact received in the USPTO on filing on September 15, 2003. In support of this assertion, petitioner has supplied a stamped postcard which acknowledges receipt by the USPTO on September 15, 2003, of, *inter alia*, 5 sheets of drawings.

The drawings stated to have been submitted on filing could not be found in the records of the USPTO. However, MPEP 503 states that "A post card receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO." Accordingly, the evidence supports the fact that 5 sheets of drawings were in fact present on filing.

Nevertheless, the Notice of December 15, 2003, was improper for the following reason. This application contained, on filing, at least one method or process claim, which normally does not require a drawing. It is USPTO policy, per MPEP 601.01(f), to treat such an application under the procedure set forth in MPEP 601.01(g). Under that procedure, rather than mailing a Notice of Incomplete Nonprovisional Application indicating that the lack of drawings precluded the grant of a filing date, the USPTO should have accorded the application papers a filing date of September 15, 2003, and sent a Notice of Omitted Items. Accordingly, the Notice mailed September 15, 2003, insofar as not granting the application a filing date, was mailed in error and is vacated.

After this decision is mailed, the \$130 petition fee will be credited to counsel's Deposit Account No. 04-1679.

This application is being referred to the Office of Initial Patent Examination Division for processing with an indication that 5 sheets of drawings containing Figures 1-6 were present on filing on September 15, 2003, and using the 5 sheets of drawings filed on January 28, 2004.

Any inquiries concerning this decision on petition may be directed to Frances Hicks at (703) 305-8680.

Brian Hearn

Brian Hearn
Senior Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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